

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: SMALL WIND INNOVATION ZONE – LINN COUNTY	DOCKET NO. IAC-2012-1522
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ORDER DESIGNATING SMALL WIND INNOVATION ZONE

(Issued May 10, 2012)

On April 13, 2012, Linn County, Iowa (Linn County), filed with the Utilities Board (Board) an application for designation of its unincorporated areas as a Small Wind Innovation Zone pursuant to Iowa Code § 476.48 and 199 IAC 15.22. No objections or responses to Linn County's application have been filed.

Iowa Code § 476.48 provides that political subdivisions may be designated as Small Wind Innovation Zones if certain requirements are met; the purpose of the statute is to allow owners of small wind energy systems located within a Small Wind Innovation Zone to benefit from a streamlined process to be interconnected with an electric utility. Iowa Code § 476.48(2)"a." To be designated as a Small Wind Innovation Zone, an area must be:

[A] political subdivision of this state, including but not limited to a city, county, township, school district, community college, area education agency, institution under the control of the state board of regents, or any other local commission, association, or tribal council which adopts, or is encompassed within a local government which adopts, the **model ordinance** (Iowa Code § 476.48(1)"c," emphasis added).

In accordance with Iowa Code § 476.48(3), the Model Ordinance was jointly developed by the Iowa League of Cities, the Iowa State Association of Counties, the Iowa Environmental Council, the Iowa Wind Energy Association, and representatives from the utility industry, and was made available on the websites of the Iowa League of Cities and Iowa State Association of Counties. Section 476.48(3) provides that a local government adopting the Model Ordinance "shall establish an expedited approval process with regard to small wind energy systems in compliance with the ordinance"

In addition to adopting the Model Ordinance, a political subdivision that seeks to be designated as a Small Wind Innovation Zone must also be served by an electric utility that "has agreed to utilize the model interconnection agreement to contract with the small wind energy system owners who agree to its terms." Iowa Code § 476.48(2)"b." The Model Interconnection Agreement referred to in the statute was developed and adopted by the Board in Docket No. RMU-2009-0008. The adopted rules in 199 IAC 45 are mandatory for rate-regulated electric utilities and voluntary for non-rate-regulated electric cooperatives and municipal utilities. Therefore, if a political subdivision is served by at least one rate-regulated utility, it is served by an electric utility that uses the Model Interconnection Agreement and meets the requirement of Iowa Code § 476.48(2)"b."

In its application, Linn County provided a copy of amendments to its Uniform Development Code, specifically Article 6, Section 7, § (4), and additions to Article 9, Section 3. Linn County adopted the amendments and additions on March 12, 2012, to conform to the Model Ordinance. The changes adopted by Linn County match

most of the provisions of the Model Ordinance. There are five areas, however, where Linn County's ordinance departs from the Model Ordinance.

First, the Model Ordinance states that as long as the total extended height of a Small Wind Energy System meets setback requirements and is within Federal Aviation Administration limitations, there shall be no other height limitation. The Linn County ordinance sets less restrictive setback limits than the Model Ordinance but also sets an 80-foot height limit for property sizes less than one acre and a 120-foot height limit for property sizes one acre or larger; these height limits may be increased by 25 percent to ensure that the turbine rotor clears wind obstacles such as trees and rooftops. The additional height restrictions set by Linn County are reasonable when combined with its less restrictive setback requirements and, therefore, substantially comply with the Model Ordinance's requirements.

Second, the Model Ordinance states that Small Wind Energy Systems shall not normally produce sound at levels that constitute a nuisance and shall comply with any local ordinance that regulates sound levels as a nuisance. Linn County has no nuisance ordinance but instead limits sound based on a maximum level of 60 dBA as measured at the closest neighboring inhabited dwelling. The 60 dBA standard is effectively a nuisance ordinance and this portion of Linn County's ordinance substantially complies with the Model Ordinance.

Third, the Model Ordinance states that Small Wind Energy Systems shall be a permitted use in all zoning classifications where structures of any sort are allowed. Linn County explained that it does not permit Small Wind Energy Systems in mobile home districts because of the close proximity of the primary structures and the

difficulty in meeting setback and distance requirements. Also, Linn County noted that mobile home residents usually do not own the land occupied by their units. Linn County's explanation for the restriction is reasonable and its ordinance on zoning classifications is in substantial compliance with the Model Ordinance.

Fourth, the Model Ordinance states that if a Small Wind Energy System is inoperable for six consecutive months, the owner shall be notified that the system must be restored to operating condition within six months or removed at the owner's expense. Linn County's ordinance does not provide a six-month notice period but states that if the Small Wind Energy System is not used and maintained for 365 days, it will be removed at the owner's expense. While Linn County does not provide an explicit six-month notice, the total time period (one year) before the system can be removed is identical and, therefore, in substantial compliance with the Model Ordinance.

Linn County also imposes an additional restriction related to the condition of the Small Wind Energy System that is not in the Model Ordinance. If the county determines that the Small Wind Energy System is structurally unsafe, it must be brought into compliance within 60 days or removed at the owner's expense. This additional safety standard is reasonable.

Fifth, Linn County added aesthetic requirements to its ordinance that are not in the Model Ordinance related to preservation of on-site vegetation and the color of the Small Wind Energy System. These additional requirements are reasonable.

Linn County provided a letter from Interstate Power and Light Company and an e-mail from Linn County Rural Electric Cooperative; each utility stated in its

correspondence that it provides service to portions of Linn County and is subject to the provisions of 199 IAC 45. Linn County also provided similar letters from East-Central Iowa Rural Electric Cooperative and Maquoketa Valley Electric Cooperative, along with an e-mail from Coggon Municipal Light Plant, stating that they are not subject to the provisions of 199 IAC 45.

Linn County is in substantial compliance with the Model Ordinance and is served by one or more electric utilities that utilize the Model Interconnection Agreement under 199 IAC 45. The Board will approve Linn County's application for designation of its unincorporated areas as a Small Wind Innovation Zone.

IT IS THEREFORE ORDERED:

The application to be designated a Small Wind Innovation Zone filed by Linn County, Iowa, on April 13, 2012, is approved. The unincorporated areas of Linn County, Iowa, are hereby designated as a Small Wind Innovation Zone.

UTILITIES BOARD

/s/ Elizabeth S. Jacobs

/s/ Darrell Hanson

ATTEST:

/s/ Joan Conrad
Executive Secretary

/s/ Swati A. Dandekar

Dated at Des Moines, Iowa, this 10th day of May 2012.